

GUNSHY MANOR CWA § 404

EPA ENFORCEMENT REFERRAL

Aerial photographs, still photographs, development plat, and information depicting the discharge of fill material in wetlands adjacent to Evans Creek Natural Area and historic Red Brick Road to support the Gunshy Manor Development



Introduction

- We request that USEPA immediately investigate and prosecute discharges of fill material and potential stream channel alterations without a CWA § 404 permit on King County tax parcels: 0825069012, 0825069055, 0825069013, 0825069029, 0825069102. According to the National Wetlands inventory, the wetlands on the subject property are a non-tidal Palustrine system dominated by trees, shrubs, emergents, and moss.
- Areas of the subject property routinely flood after storm events, particularly the acreage along 196th Ave. NE. The developer installed drain tiles on the northwestern parcel, also known as 7240 196th Avenue NE, in 2012. Tiles may have also been installed in other areas.
- The discharges of fill material and installation of drain tiles have occurred over the past 5 years to establish roads for a development to be known as Gunshy Manor. See Gunshy Manor advertising: thegunshymanor.com; <http://www.youtube.com/watch?v=jKV7PwXoJw>. See Development Plan *infra*.
- Aerial photographs demonstrate the roads did not exist prior to 2009 and coincide temporally with the development of Gunshy Manor and geographically with the proposed development plat. Photographs of the unpermitted discharges and tile construction are included below.
- There is no credible basis to support an argument that the discharges were associated with farms roads to support agricultural activities. The discharges were to support a new use – the development of Gunshy Manor -- and are not exempt under CWA § 404 (f). US v Johnson, 891 F2d 287 (Table), 30 ERC 1550 (4th Cir. 1989).
- During a community meeting on May 28, 2014, the owner publicly stated that he did not require a permit for any of the filling activity.
- The wetlands are part of an approximately 160 acre tract of land that is (1) located on the east side of 196th Avenue NE, Redmond 98053, which is a registered historic landmark and (2) directly adjacent to the Evans Creek Natural Area, a 38 acre nature preserve in the Bear Creek Basin. Evans Creek flows through the western portion of the natural area and across the southwestern portion of the subject property.
- Evans Creek and the surrounding property, and tributaries to Evans Creek in adjacent properties, contain significant habitat for a variety of fish, bird and mammalian wildlife species, including herons, bald eagles and lynx. “Evans Creek is home to Chinook salmon as well as substantial populations of coho and sockeye salmon. See <http://www.kingcounty.gov/environment/waterandland/natural-lands/ecological/evans-creek.aspx>. Chinook salmon are listed as threatened under the ESA.
- Neighbors have observed salmon in both Evans Creek and its tributaries, including tributaries on the surrounding properties, each fall.
- Flooding of private residences located downstream of the fill activity on the west side of 196th Ave. NE and adjacent to Evans Creek have dramatically increased and are now seriously threatening the homes. E.g. [REDACTED] [REDACTED] [REDACTED]
- Because the earthmoving activity is ongoing as recently as May 29, 2014, a cease and desist order and likely a temporary restraining order are necessary to stop ongoing, knowing and deliberate violations of the CWA and to prevent further destruction of wetlands that are an integral part of the Evans Creek and Bear Creek aquatic systems, provide important water purification for these streams which directly support salmon populations, flood control for the residents in the immediate community, and critical habitat functions for a variety of wildlife.

Gunshy Manor Development

A community meeting with **William C. “Buff” Nelson** (“the developer”) on May 28th, 2014 and subsequent review of documentation provided by both Mr. Nelson and the County revealed plans for development along the Red Brick Road. Specifically, the property to be developed consists of 124 acres along the east side of the road generally bordered by the Dreher property and Union Hill Rd. to the north; wooded, hilly terrain to the East; Evans Creek Natural Preserve (wetlands) to the South; and the historic Red Brick Road (196th Avenue NE) to the West. The entrance to Mr. Nelson’s current Gunshy Manor home is 20005 Union Hill Road. The developer is believed to be one of five siblings who own Nelson Legacy Group, 16508 NE 79th Street, Redmond, WA 98052, and the subject property. See <http://www.nelsonlegacygroup.com/manager.html>.

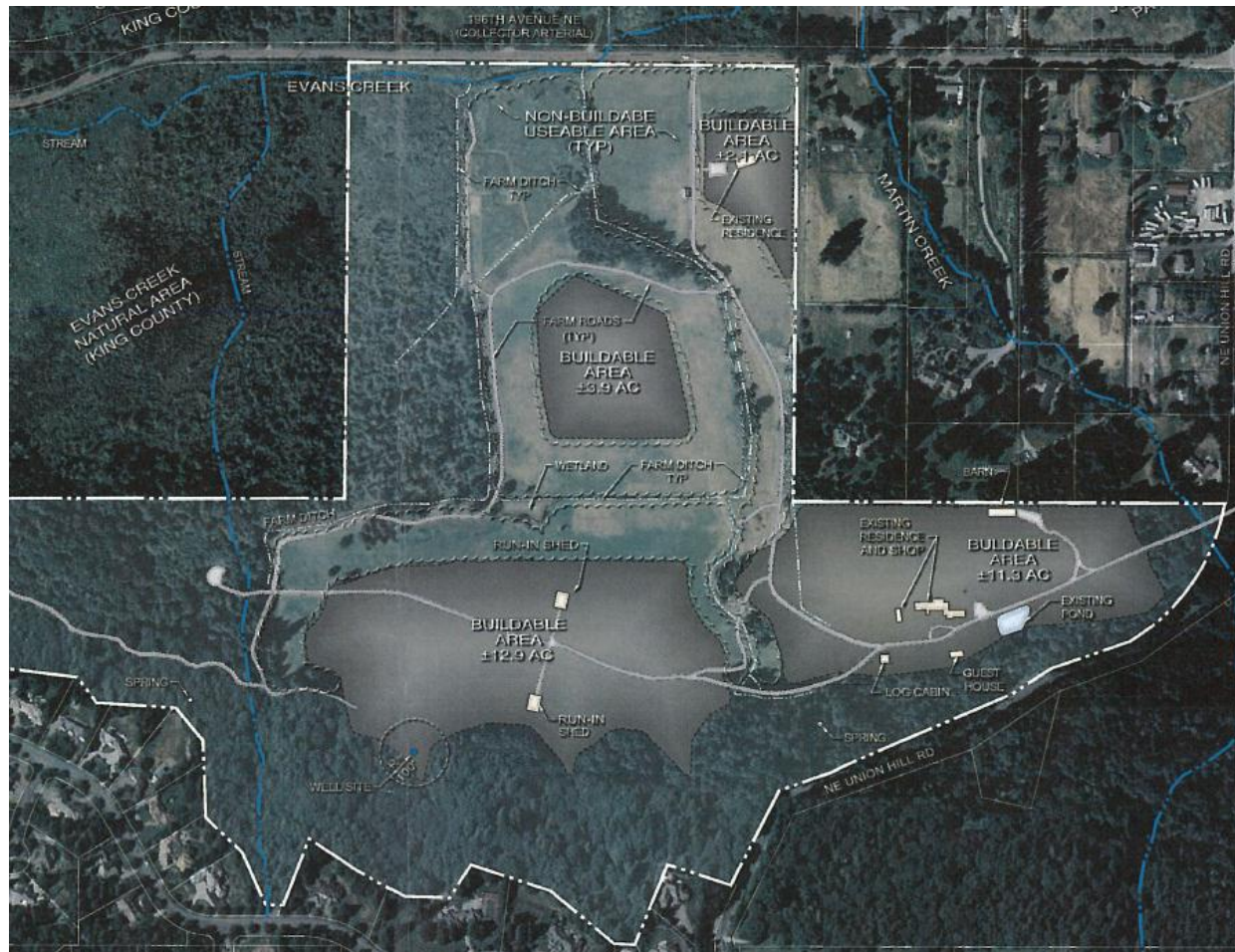
Several possible development scenarios are possible but the most likely scenario is a 25-lot single family residential subdivision.

Development Scenarios:

- 25 lot (1 acre parcel) single family residential subdivision (most likely)
- Equine Facility
- 600 student K-12 private school
- 100k SF Church
- Combination single family residential subdivision and equine facility
- Combination 600 student private school and 100k SF church
- Winery
- Corporate retreat

Gunshy Manor Development

The mostly likely scenario would consist of up to 25 one acre lots with luxury homes (“greater in quality than those on Gunshy Ridge,” which are currently valued at up to \$1.5M) built within four separate buildable areas on the property but all contained within a single future gated community governed by an HOA. The buildable areas would allow two homes in the vicinity of a current home at 7240 196th Avenue NE which would be demolished for the development, three homes in the lower portion of the current field, 11-12 homes in the vicinity of the hillside, and 10-11 homes in the vicinity of the current Gunshy Manor home (near Union Hill Rd.). This is all equal to roughly one home per acre in the buildable areas depicted below.



The developer’s use of the term “farm roads” on the development plan is a mischaracterization and suggest he may try to improperly invoke CWA § 404(f). Aerial photos demonstrate the roads did not exist for the decades the property was an agricultural operation. The roads were created in the last 5 years to support the development and are not exempt from permitting.

Gunshy Manor Development

The most aggressive project schedule would start work on utility installation in the fall of 2015 which would be followed by home construction the next summer. All utilities would be buried. Utilities would consist of joining water lines from Union Hill Road (8" main) and the Red Brick Road (6" main) and burying electrical and gas lines. The developer believes Comcast would provide internet service. All homes would be on septic systems.

The developer believes he is allowed to "cluster" homes on one acre lots in a RA-5 zoned area by conserving other, undeveloped portions of the property. The total area of the property is 124 acres which would allow 24 or 25 home's worth of 5 acre parcels. These 25 homes can be clustered on smaller lots if the remaining land is undeveloped.



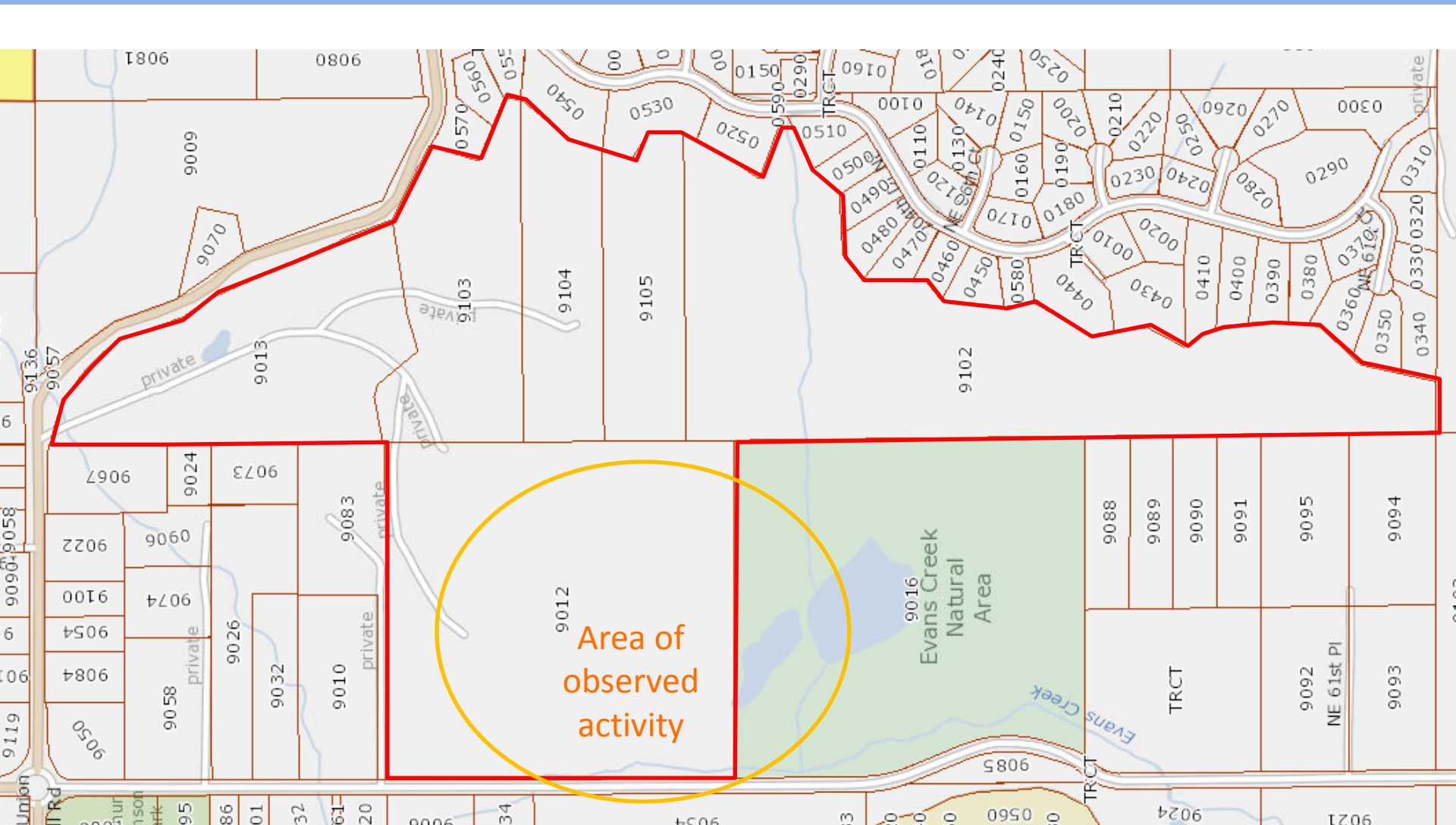
Gunshy Manor Development

In order to maximize buildable land and minimize setback requirements, residents believe the developer has discharged fill into federally protected wetlands with out a CWA § 404 permit. This is based upon events residents have witnessed, a review of aerial photography, and statements made by former renters at 7240 196th Avenue NE and individuals who worked on the subject property.

The discharges have already exacerbated flooding within the this community, particularly the homes down stream of the subject property.

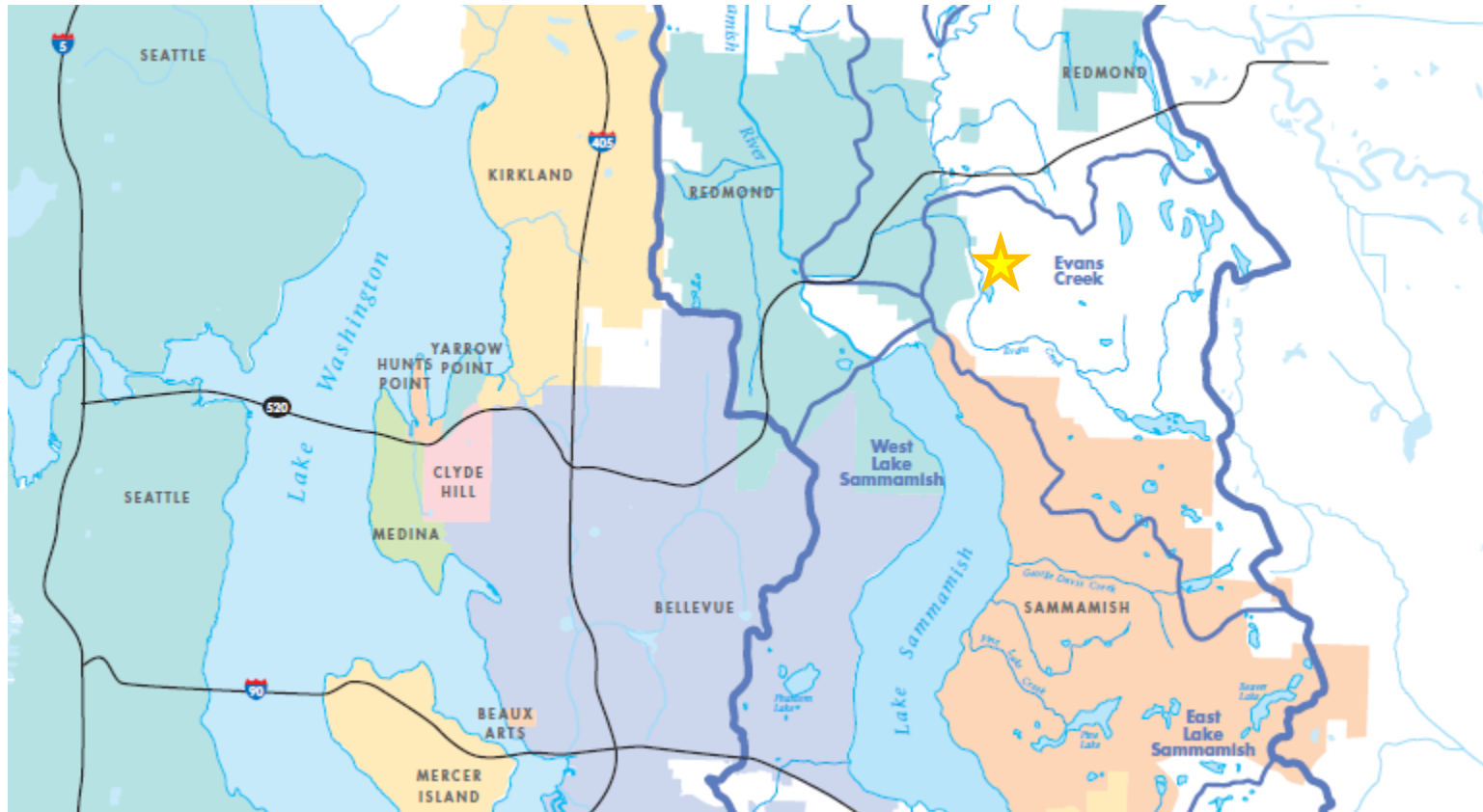
A cease and desist order and other injunctive relief is necessary to stop ongoing, knowing and deliberate violations of the CWA and to prevent further destruction of wetlands that are an integral part of the Evans Creek and Bear Creek aquatic systems, provide important water purification for these streams which directly support salmon populations, flood control for the residents in the immediate community, and critical habitat functions for a variety of wildlife.

Tax parcels



The developer's property is outlined in red and consists of tax parcels 0825069013, 0825069103, 0825069104, 0825069105, 0825069102, and 0825069012. Tax parcel **0825069012** contains the area of observed activity of concern.

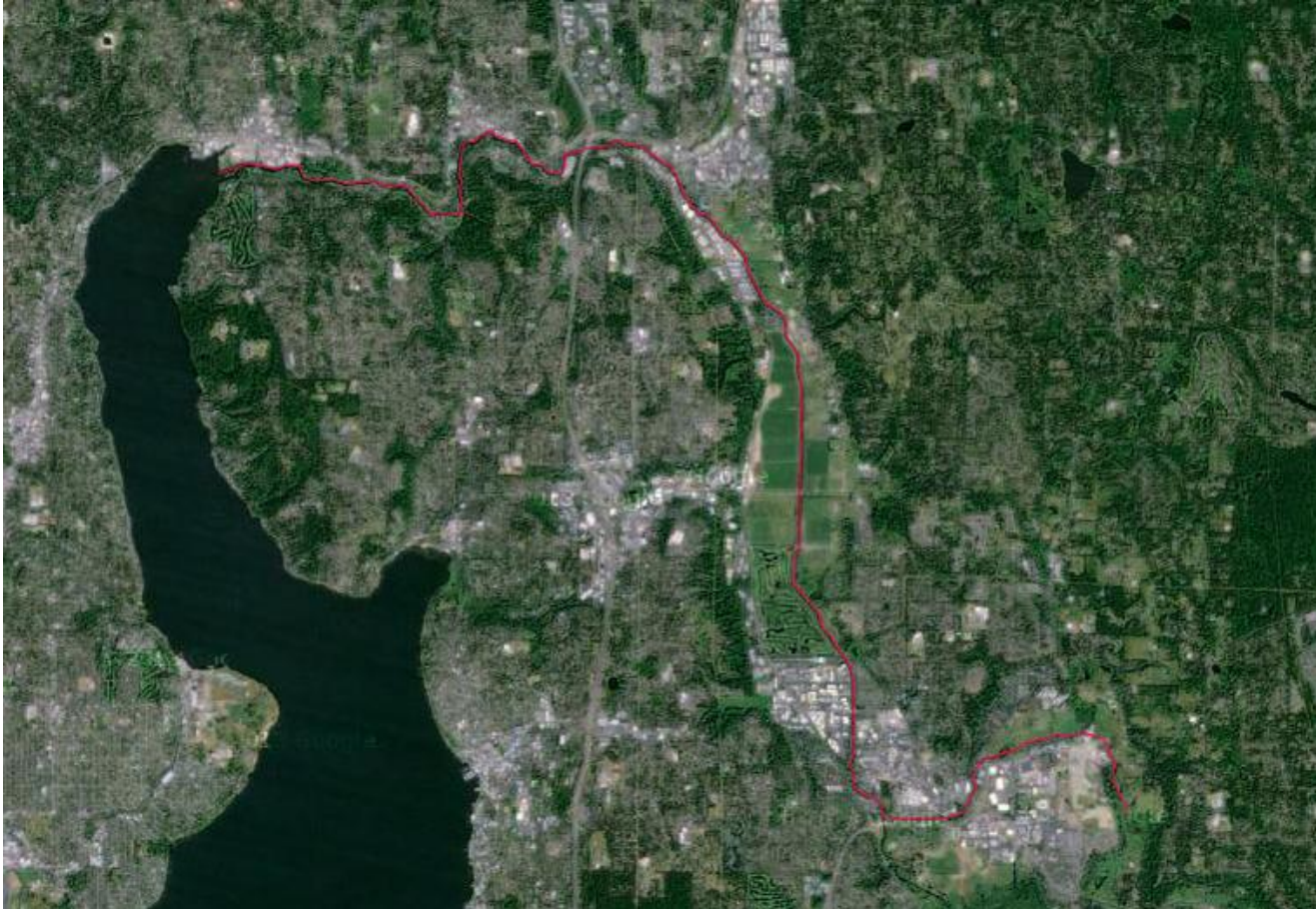
Watershed and Basin Overview



Subject area is part of the Evans Creek Basin of the Sammamish Watershed, which is part of the greater Lake Washington - Cedar River drainage.

Hydrologic Connection to Lake Washington

Continuous surface water connection between subject area and Lake Washington

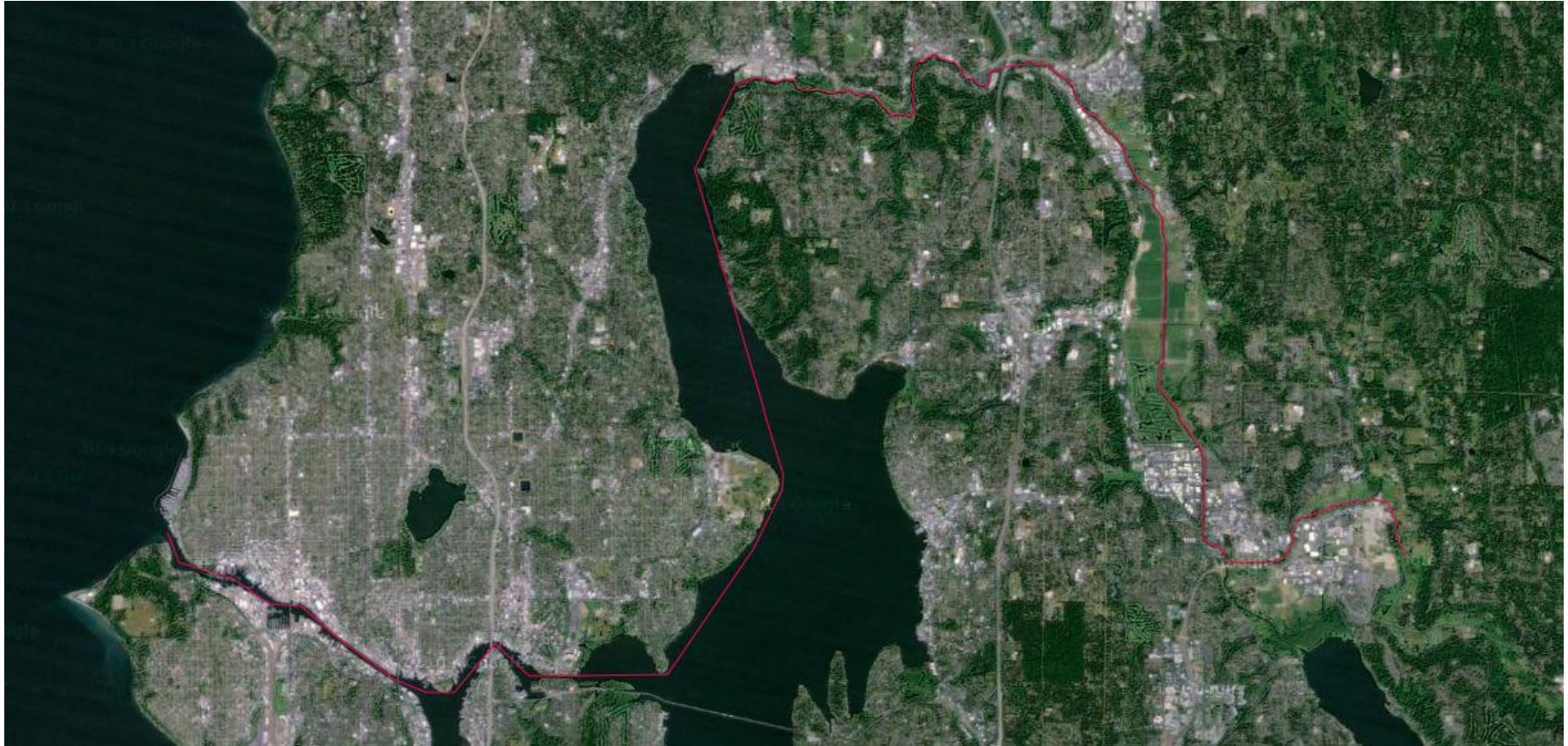


River distance between subject area and Lake Washington: 15.7 miles

Connected via: Evans Creek, Bear Creek and Sammamish River

Hydrologic Connection to the Puget Sound

Continuous surface water connection between subject area and Puget Sound



River distance between subject area and the Puget Sound: 31.1 miles

Connected via: Evans Creek, Bear Creek, Sammamish River, Lake Washington, Montlake Cut, Lake Union and Lake Washington Ship Canal

Federal Wetlands Inventory Map



Description for code PFOA:

System PALUSTRINE: The Palustrine System includes all nontidal wetlands dominated by trees, shrubs, emergents, mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean derived salts is below 0.5 ppt. Wetlands lacking such vegetation are also included if they exhibit all of the following characteristics: 1. are less than 8 hectares (20 acres); 2. do not have an active wave-formed or bedrock shoreline feature; 3. have at low water a depth less than 2 meters (6.6 feet) in the deepest part of the basin; 4. have a salinity due to ocean-derived salts of less than 0.5 ppt.

Class FORESTED: Characterized by woody vegetation that is 6 m tall or taller.

WATER REGIME Temporary Flooded: Surface water is present for brief periods during growing season, but the water table usually lies well below the soil surface for most of the growing season. Plants that grow both in uplands and wetlands may be characteristic of this water regime.

Description for code PEMA :

System PALUSTRINE: The Palustrine System includes all nontidal wetlands dominated by trees, shrubs, emergents, mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean derived salts is below 0.5 ppt. Wetlands lacking such vegetation are also included if they exhibit all of the following characteristics: 1. are less than 8 hectares (20 acres); 2. do not have an active wave-formed or bedrock shoreline feature; 3. have at low water a depth less than 2 meters (6.6 feet) in the deepest part of the basin; 4. have a salinity due to ocean-derived salts of less than 0.5 ppt.

Class EMERGENT: Characterized by erect, rooted, herbaceous hydrophytes, excluding mosses and lichens. This vegetation is present for most of the growing season in most years. These wetlands are usually dominated by perennial plants.

WATER REGIME Temporary Flooded: Surface water is present for brief periods during growing season, but the water table usually lies well below the soil surface for most of the growing season. Plants that grow both in uplands and wetlands may be characteristic of this water regime.

Description for code PFO/SSC :

System PALUSTRINE: The Palustrine System includes all nontidal wetlands dominated by trees, shrubs, emergents, mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean derived salts is below 0.5 ppt. Wetlands lacking such vegetation are also included if they exhibit all of the following characteristics: 1. are less than 8 hectares (20 acres); 2. do not have an active wave-formed or bedrock shoreline feature; 3. have at low water a depth less than 2 meters (6.6 feet) in the deepest part of the basin; 4. have a salinity due to ocean-derived salts of less than 0.5 ppt.

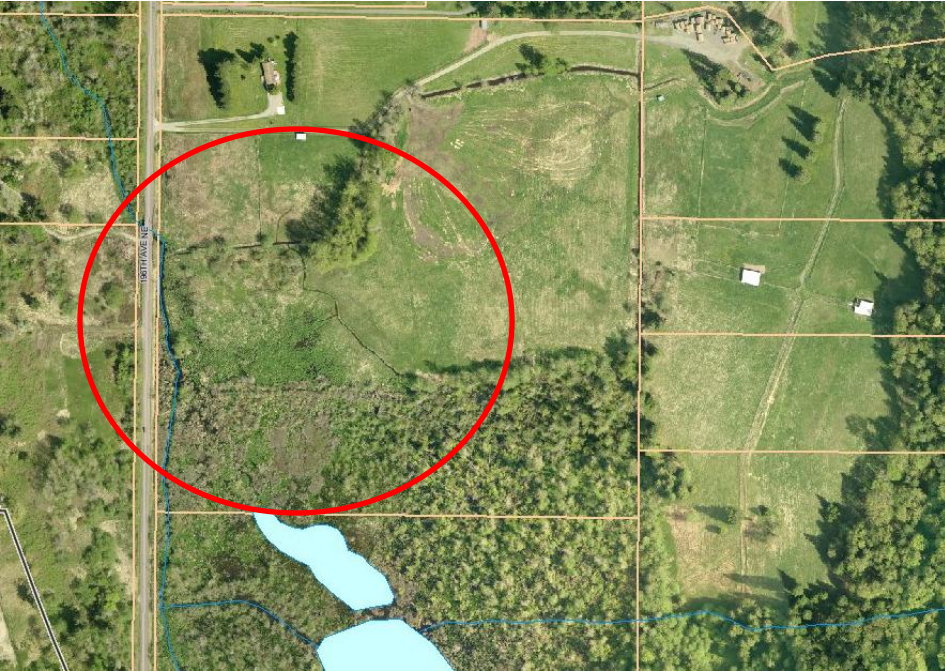
Class FORESTED: Characterized by woody vegetation that is 6 m tall or taller.

System PALUSTRINE: The Palustrine System includes all nontidal wetlands dominated by trees, shrubs, emergents, mosses or lichens, and all such wetlands that occur in tidal areas where salinity due to ocean derived salts is below 0.5 ppt. Wetlands lacking such vegetation are also included if they exhibit all of the following characteristics: 1. are less than 8 hectares (20 acres); 2. do not have an active wave-formed or bedrock shoreline feature; 3. have at low water a depth less than 2 meters (6.6 feet) in the deepest part of the basin; 4. have a salinity due to ocean-derived salts of less than 0.5 ppt.

Class SCRUB-SHRUB: Includes areas dominated by woody vegetation less than 6 m (20 feet) tall. The species include true shrubs, young trees (saplings), and trees or shrubs that are small or stunted because of environmental conditions.

WATER REGIME Seasonally Flooded: Surface water is present for extended periods especially early in the growing season, but is absent by the end of the growing season in most years. The water table after flooding ceases is variable, extending from saturated to the surface to a water table well below the ground surface.

Historical Comparison



2009 imagery depicts a relatively undisturbed wetland area.



2012 imagery, with federal wetland inventory overlay, depicts new road construction and evidence of filling.



New roads, fill, and modification of natural channels and drainage/stream beds

County Defined Wetlands



County Defined Critical Aquifer Recharge Area



Aerial Imagery of Heavy Machinery Working in Subject Area



Viewable online at

<https://maps.google.com/maps?q=7504+196th+Ave+NE,+Redmond,+WA&hl=en&ll=47.668887,-122.077321&spn=0.002192,0.003484&sll=50.585206,3.330092&sspn=0.046758,0.111494&oq=7504+&t=h&hnear=7504+196th+Ave+NE,+Redmond,+Washington+98053&z=19>

Video Stills of Heavy Machinery Working in Area on August 17th, 2011

Additional photos
can be provided

Nelson or his
company may
own the dump
trucks



Backhoe filling
dump truck with fill
dirt at 4:47pm



Dump truck backing
into area of concern
at 4:52pm

Additional Aerial View of Fill Area



Photos of Drainage Tiling

Subject property: Parcel at 7240 196th flooding in response to rain pre-2012



Photos of Drainage Tiling

Subject property: Drain tiles being constructed at 7240 196th in 2012



CWA § 404(f) Does Not Apply

- In US v Johnson, 891 F2d 287 (Table), **30 ERC 1550** (4th Cir. 1989), the Fourth Circuit “denied a defendant's attempt to assert that he qualified for a § 404(f) exemption after sporadically developing his wetland property over a ten-year period. The defendant began draining and road-building activities in **1977**, stopped for ten years, and then resumed the actions in **1988** in order to develop the property for a “**hunting club**” and “complete **residential development**.” The court held he was not protected under § 404's “[n]arrow exemptions,” because the activities were “not a normal part of ongoing and continuous agricultural or forestry operations, but rather preparations for putting the property to **new uses**.” See <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1203&context=delpf>
- Courts consistently have strictly construed the § 404(f) exemptions in agricultural conversion cases. In U.S. v. Huebner, the Seventh Circuit held that expanding cultivation of a wetland crop to adjacent wetlands did not qualify for the § 404(f) exemption, because it required draining the surrounding area and brought the wetland into a new “use”. In U.S. v. Akers, the Ninth Circuit denied a normal farming exemption to a defendant who converted his wetlands to upland crop production, even though the wetlands had been farmed since **1897**. The court there rejected the defendant's argument that it was a change within a farming use, holding that the “substantiality of the impact on the wetland,” not the historical use, is controlling and determines whether the activity is re-captured under §404(f)(2).52” <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1203&context=delpf>
- Aerial photos demonstrate the roads did not exist for the decades the property was an agricultural operation. Rather, they show the roads were created in the last 5 years to support a new use – the Gunshy Manor development --, not an ongoing farming operation, and does not qualify for a CWA § 404(f) exemption.

Lists of Possible Persons with Knowledge

Known Witnesses

(in alphabetical order)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Possible Witnesses

- Current and prior renters of 7240 196th Avenue NE (Nelson rental home)
- Employees of Buff Nelson and his company
- Other residents of the Red Brick Road

Some residents have disclosed that they anonymously reported observed activity to the county for potential local enforcement. There is no knowledge of any county investigation or enforcement action on these complaints.